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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TERENCE FERNANDES, Derivatively On Behalf  
of CELL THERAPEUTICS, INC.,

Plaintiff,

v.

MAX E. LINK, JAMES A. BIANCO, JOHN M.  
FLUKE, JR., VARTAN GREGORIAN, PHILLIP  
M. NUDELMAN, MARY O'NEIL MUNDINGER,  
ERICH PLATZER, JACK W. SINGER, SILVANO  
SPINELLI, and DOES 1-25, inclusive,

Defendants

-and-

CELL THERAPEUTICS, INC., a Washington  
corporation,

Nominal Defendant.

C05-0964 JLR

Case No.

NOTICE OF REMOVAL

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

05-CV-00964-CMP

Pursuant to U.S.C. § 1441(a), defendants Vartan Gregorian and Mary O'Neil  
Mundinger hereby remove the above-entitled action to the United States District Court  
for the Western District of Washington. Defendants Gregorian and Mundinger state as

NOTICE OF REMOVAL

ORIGINAL

Heller Ehrman LLP  
701 Fifth Avenue, Suite 8100  
Seattle, Washington 98104-7098  
Telephone (206) 447-0900

1 follows:

2 1. The above-entitled case was filed in King County Superior Court, State  
3 of Washington, under the caption *Terence Fernandes, Derivatively on Behalf of Cell*  
4 *Therapeutics, Inc. v. Max E Link et al.*, Case No. 05-2-15473-0 SEA.

5 2. This is a civil action filed by Terence Fernandes against defendants Max  
6 E. Link, James A. Bianco, John M. Fluke, Jr., Vartan Gregorian, Phillip M. Nudelman,  
7 Mary O'Neil Munding, Erich Platzer, Jack W. Singer, Silvano Spinelli, and Does 1-  
8 25. Cell Therapeutics, Inc. is named as a nominal defendant. The citizenship of each  
9 of these defendants is as follows:

10 a) Defendants Gregorian and Munding are citizens of the State of New  
11 York, and were so at the time this action was initiated.

12 b) Defendants Bianco, Fluke, Nudelman and Singer are citizens of the  
13 State of Washington, and were so at the time this action was initiated.

14 c) Defendants Link, Platzer and Spinelli, both now and at the time this  
15 action was initiated, are (and were) foreign nationals and not citizens of any State of the  
16 United States of America.

17 d) Nominal defendant Cell Therapeutics, Inc., which is aligned as a  
18 defendant for purposes of 28 U.S.C. §§ 1332 and 1441, is a Washington corporation  
19 with its principal place of business in Washington. This was also the case at the time  
20 this action was initiated.

21 e) The citizenship of the alleged "Doe" defendants must by law be  
22 disregarded for purposes of removal. 28 U.S.C. § 1441(a).

23 3. Now and at the time this action was initiated, plaintiff Terence Fernandes  
24 is (and was) a citizen of California, Georgia, Pennsylvania, Michigan or Oregon, and is  
25 (and was) not a citizen of either Washington or New York. Plaintiff Fernandes did not  
26 verify the complaint, as required pursuant to CR 23.1, which would have revealed his  
27 location and residence. Plaintiff's verification was executed by Fernandes' attorney  
28 rather than by Fernandes himself, and so Fernandes has not pled or disclosed in a

1 verified declaration that he is a citizen of any particular state. RCW 9A.72.085 (where  
2 a person's verification is required by law, an unsworn declaration may be submitted  
3 instead only if, among other things, it is signed by the person himself or herself and  
4 states the date and place of its execution); GR 13 (same).

5 4. Diversity of citizenship exists in each claim between plaintiff and  
6 defendants. 28 U.S.C. § 1332(a).

7 5. Plaintiff's claims involve an amount in controversy that exceeds the  
8 statutory minimum of \$75,000, exclusive of interest and costs. This is demonstrated  
9 by, among other things, ¶ 47 of the attached complaint, which alleges insider selling in  
10 the amount of \$833,798.37, and the "Prayer for Relief" in the same complaint, in which  
11 plaintiff asks the Court to order "disgorgement of all profits, benefits and other  
12 compensation obtained by the defendants."

13 6. Under 28 U.S.C. § 1332(a), this Court has original jurisdiction over the  
14 subject matter of the present action because it is an action between citizens of different  
15 states where the sum or value of the matter in controversy exceeds \$75,000, exclusive  
16 of interest and costs.

17 7. This action is removed to this Court under 28 U.S.C. § 1441 because this  
18 Court has original jurisdiction over the action. Defendants expressly reserve all  
19 objections and defenses, including but not limited to lack of service of process and lack  
20 of personal jurisdiction.

21 8. In accordance with the requirements of 28 U.S.C. § 1446, this Notice of  
22 Removal was timely filed, plaintiff's complaint having been filed in King County  
23 Superior Court on May 9, 2005, and no defendant currently having been served with  
24 the complaint or summons. Attached hereto as EXHIBIT A and incorporated herein by  
25 this reference is a copy of that complaint.

26 9. Written notification of the filing of this Notice is being provided to  
27 plaintiff as required by law.  
28

1        10. A true copy of this Notice of Removal is being filed with the Clerk of the  
2 King County Superior Court of Washington.

3  
4 DATED this 26th day of May, 2005

HELLER EHRMAN LLP

5  
6 By: 

Daniel J. Dunne, WSBA #16999

Norman J. Blears,

*Pro Hac Vice Application Pending*

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12  
13 Attorney for Defendants

Vartan Gregorian and Mary O'Neil Munding

# **EXHIBIT A**

CHARLES W. MERTEL

FILED

05 MAY -9 AM 9:17

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

SUPERIOR COURT OF THE STATE OF WASHINGTON  
KING COUNTY

TERENCE FERNANDES, Derivatively On  
Behalf of CELL THERAPEUTICS, INC.,

Plaintiff,

vs.

MAX E. LINK, JAMES A. BIANCO, JOHN  
M. FLUKE, JR., VARTAN GREGORIAN,  
PHILLIP M NUDELMAN, MARY O'NEIL  
MUNDINGER, ERICH PLATZER, JACK W.  
SINGER, SILVANO SPINELLI, and  
DOES 1-25, inclusive,

Defendants

-and-

CELL THERAPEUTICS, INC., a Washington  
corporation,

Nominal Defendant.)

Case 05-2-15473-0 SEA

VERIFIED SHAREHOLDER  
DERIVATIVE COMPLAINT FOR  
BREACH OF FIDUCIARY DUTY, ABUSE  
OF CONTROL, GROSS  
MISMANAGEMENT, WASTE OF  
CORPORATE ASSETS AND UNJUST  
ENRICHMENT

DEMAND FOR JURY TRIAL

Plaintiff, by his attorneys, submits this Verified Shareholder Derivative Complaint (the  
"Complaint") against the defendants named herein.

**NATURE OF THE ACTION**

1. This is a shareholder derivative action brought by a shareholder of Cell Therapeutics,  
Inc. ("Cell Therapeutics" or the "Company"), on behalf of the Company against certain of its officers  
and directors seeking to remedy defendants' violations of state law, including breaches of fiduciary

SHAREHOLDER DERIVATIVE COMPLAINT - I

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1 duties, abuse of control, gross mismanagement, waste of corporate assets and unjust enrichment that  
2 occurred between June 7, 2004 and the present (the "Relevant Period") and that have caused  
3 substantial losses to Cell Therapeutics and other damages, such as to its reputation and goodwill.

#### 4 JURISDICTION AND VENUE

5 2. This Court has jurisdiction over all causes of action asserted herein pursuant to  
6 Revised Code of Washington §2.08.010.

7 3. This Court has jurisdiction over each defendant named herein because each defendant  
8 is either a corporation that does sufficient business in Washington, or is an individual who has  
9 sufficient minimum contacts with Washington so as to render the exercise of jurisdiction by the  
10 Washington courts permissible under traditional notions of fair play and substantial justice.

11 4. Venue is proper in this Court because one or more of the defendants either resides in  
12 or maintains executive offices in this County, a substantial portion of the transactions and wrongs  
13 complained of herein, including the defendants' primary participation in the wrongful acts detailed  
14 herein and aiding and abetting and conspiracy in violation of fiduciary duties owed to Cell  
15 Therapeutics occurred in this County, and defendants have received substantial compensation in this  
16 County by doing business here and engaging in numerous activities that had an effect in this County.

#### 17 SUMMARY OF THE ACTION

18 5. Cell Therapeutics develops, acquires and commercializes treatments for cancer. The  
19 research and in licensing activities are focused on identifying ways to treat cancer. The Company  
20 markets TRISENOX (arsenic trioxide) for the treatment of relapsed or refractory acute  
21 promyelocytic leukemia (APL) in the United States and in Europe. It is developing XYOTAX  
22 (paclitaxel poliglumex) for the potential treatment of non-small cell lung cancer (NSCLC) and  
23 ovarian cancer. The Company has completed enrollment of more than 1,700 patients in three pivotal  
24 Phase III trials of XYOTAX, known as STELLAR 2, 3 and 4, for the treatment of NSCLC. It also  
25 develops pixantrone, a compound in the class of drugs known as anthracyclines, for the potential  
26 treatment of non-Hodgkin's lymphoma (NHL) and has several clinical trials ongoing, including a  
27 pivotal Phase III trial for the potential treatment of relapsed aggressive NHL.

28 SHAREHOLDER DERIVATIVE COMPLAINT - 2

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6. **Despite defendants' public representations to the contrary:**

(a) the observations associated with XYOTAX evidenced that the primary endpoint for the XYOTAX study would not be met, as claimed;

(b) the claims associated with the Company's ability to commence pre-launch activities or otherwise even begin to submit a New Drug Application ("NDA") for XYOTAX were grossly overstated; in fact, the Company's ability to ever reach these points is highly questionable; and

(c) the survival rate for individuals with NSCLC using XYOTAX was not superior to the prevailing treatment.

7. As a result of the defendants' false statements, Cell Therapeutics' stock traded at inflated levels during the Relevant Period, increasing to as high as \$10.49 on March 2, 2005. Taking advantage of the inflation, the defendants caused the Company to sell more than \$18.4 million worth of the Company's shares via a private placement. Also during the Relevant Period, the defendants caused the Company to sell an additional \$49.16 million via a secondary offering. Thus, defendants, devoid of a profitable quarter and causing false claims to inflate the Company's shares, caused Cell Therapeutics to sell \$18.4 million worth of its securities in a private placement just months before the Company imploded. In turn, defendants utilized these proceeds to pay themselves exorbitant salaries while at the same time exposing the Company to liability. Further, defendants capitalized on Cell Therapeutics' inflated stock by selling \$833,798.37 worth of their personally held shares.

## THE PARTIES

8. Plaintiff Terence Fernandes is, and was at times relevant hereto, an owner and holder of Cell Therapeutics common stock.

9. Nominal defendant Cell Therapeutics is a corporation organized and existing under the laws of the state of Washington with its headquarters located at 501 Elliott Avenue West, Suite 400, Seattle, Washington. Cell Therapeutics develops, acquires and commercializes treatments for cancer.



1           10. Defendant James A. Bianco ("Bianco") is, and at all times relevant hereto was  
 2 principal founder, President, Chief Executive Officer ("CEO") and a director of Cell Therapeutics.  
 3 Because of Bianco's positions, he knew the adverse non public information about the business of  
 4 Cell Therapeutics, specifically, that XYOTAX was not superior to the prevailing treatment, as well  
 5 as its finances, markets and present and future business prospects, via access to internal corporate  
 6 documents, conversations and connections with other corporate officers and employees, attendance  
 7 at management and Board of Directors (the "Board") meetings and committees thereof and via  
 8 reports and other information provided to him in connection therewith. During the Relevant Period,  
 9 Bianco participated in the issuance of false and/or misleading statements, including the preparation  
 10 of the false and/or misleading press releases and Securities and Exchange Commission ("SEC")  
 11 filings. For FY:03, Cell Therapeutics paid defendant Bianco \$3,053,665, in salary, bonus, restricted  
 12 stock awards and other compensation, and granted him 125,000 options to purchase Cell  
 13 Therapeutics stock. During the Relevant Period, Bianco sold 60,000 shares of Cell Therapeutics  
 14 stock for proceeds of \$334,273.00.

15           11. Defendant Jack W. Singer ("Singer") is, and at all times relevant hereto was, founder,  
 16 Executive Vice President, and Chief Medical Officer and a director of Cell Therapeutics. Because of  
 17 Singer's position, he knew the adverse non public information about the business of Cell  
 18 Therapeutics, specifically, that XYOTAX was not superior to the prevailing treatment, as well as its  
 19 finances, markets and present and future business prospects, via access to internal corporate  
 20 documents, conversations and connections with other corporate officers and employees, attendance  
 21 at management and Board meetings and committees thereof and via reports and other information  
 22 provided to him in connection therewith. During the Relevant Period, Singer participated in the  
 23 issuance of false and/or misleading statements, including the preparation of the false and/or  
 24 misleading press releases and SEC filings. For FY:03, Cell Therapeutics paid defendant Singer  
 25 \$1,223,596 in salary, bonus, restricted stock awards and other compensation, and granted him 75,000  
 26 options to purchase Cell Therapeutics stock. During the Relevant Period, Singer sold 19,800 shares  
 27 of Cell Therapeutics stock for proceeds of \$187,584.65.

28 SHAREHOLDER DERIVATIVE COMPLAINT - 4

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12. Defendant Silvano Spinelli ("Spinelli") is, and at all times relevant hereto was, Executive Vice President of Development, Managing Director European Operations, and a director of Cell Therapeutics. Because of Spinelli's position, he knew the adverse non public information about the business of Cell Therapeutics, specifically, that XYOTAX was not superior to the prevailing treatment, as well as its finances, markets and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board meetings and committees thereof and via reports and other information provided to him in connection therewith. During the Relevant Period, Spinelli participated in the issuance of false and/or misleading statements, including the preparation of the false and/or misleading press releases and SEC filings. During the Relevant Period, Spinelli sold 40,000 shares of Cell Therapeutics stock for proceeds of \$311,940.37.

13. Defendant Max E. Link ("Link") is, and at all times relevant hereto was, Chairman and a director of Cell Therapeutics. Because of Link's position, he knew the adverse non public information about the business of Cell Therapeutics, specifically, that XYOTAX was not superior to the prevailing treatment, as well as its finances, markets and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at Board meetings and committees thereof and via reports and other information provided to him in connection therewith. During the Relevant Period, Link participated in the issuance of false and/or misleading statements, including the preparation of the false and/or misleading press releases and SEC filings.

14. Defendant John M. Fluke ("Fluke") is, and at all times relevant hereto was, a director of Cell Therapeutics. Because of Fluke's position, he knew the adverse non public information about the business of Cell Therapeutics, specifically, that XYOTAX was not superior to the prevailing treatment, as well as its finances, markets and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at Board meetings and committees thereof and via reports and other information provided to him in connection therewith. During the Relevant Period, Fluke participated

SHAREHOLDER DERIVATIVE COMPLAINT - 5

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1 in the issuance of false and/or misleading statements, including the preparation of the false and/or  
2 misleading press releases and SEC filings.

3 15. Defendant Vartan Gregorian ("Gregorian") is, and at all times relevant hereto was, a  
4 director of Cell Therapeutics. Because of Gregorian's position, he knew the adverse non public  
5 information about the business of Cell Therapeutics, specifically, that XYOTAX was not superior to  
6 the prevailing treatment, as well as its finances, markets and present and future business prospects,  
7 via access to internal corporate documents, conversations and connections with other corporate  
8 officers and employees, attendance at Board meetings and committees thereof and via reports and  
9 other information provided to him in connection therewith. During the Relevant Period, Gregorian  
10 participated in the issuance of false and/or misleading statements, including the preparation of the  
11 false and/or misleading press releases and SEC filings.

12 16. Defendant Phillip M. Nudelman ("Nudelman") is, and at all times relevant hereto  
13 was, a director of Cell Therapeutics. Because of Nudelman's position, he knew the adverse non  
14 public information about the business of Cell Therapeutics, specifically, that XYOTAX was not  
15 superior to the prevailing treatment, as well as its finances, markets and present and future business  
16 prospects, via access to internal corporate documents, conversations and connections with other  
17 corporate officers and employees, attendance at Board meetings and committees thereof and via  
18 reports and other information provided to him in connection therewith. During the Relevant Period,  
19 Nudelman participated in the issuance of false and/or misleading statements, including the  
20 preparation of the false and/or misleading press releases and SEC filings.

21 17. Defendant Mary O'Neil Mundinger ("Mundinger") is, and at all times relevant hereto  
22 was, a director of Cell Therapeutics. Because of Mundinger's position, she knew the adverse non  
23 public information about the business of Cell Therapeutics, specifically, that XYOTAX was not  
24 superior to the prevailing treatment, as well as its finances, markets and present and future business  
25 prospects, via access to internal corporate documents, conversations and connections with other  
26 corporate officers and employees, attendance at Board meetings and committees thereof and via  
27 reports and other information provided to her in connection therewith. During the Relevant Period,

28 SHAREHOLDER DERIVATIVE COMPLAINT - 6

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1 Munding participated in the issuance of false and/or misleading statements, including the  
2 preparation of the false and/or misleading press releases and SEC filings.

3 18. Defendant Erich Platzer ("Platzer") is, and at all times relevant hereto was, a director  
4 of Cell Therapeutics. Because of Platzer's position, he knew the adverse non public information  
5 about the business of Cell Therapeutics, specifically, that XYOTAX was not superior to the  
6 prevailing treatment, as well as its finances, markets and present and future business prospects, via  
7 access to internal corporate documents, conversations and connections with other corporate officers  
8 and employees, attendance at Board meetings and committees thereof and via reports and other  
9 information provided to him in connection therewith. During the Relevant Period, Platzer  
10 participated in the issuance of false and/or misleading statements, including the preparation of the  
11 false and/or misleading press releases and SEC filings.

12 19. The defendants identified in ¶¶10-18 are referred to herein as the "Director  
13 Defendants." The defendants identified in ¶¶10-12 are referred to herein as the "Officer  
14 Defendants." The defendants identified in ¶¶10-12 are referred to herein as the "Insider Selling  
15 Defendants." Collectively, the Director Defendants, the Officer Defendants and the Insider Selling  
16 Defendants are referred to herein as the "Individual Defendants."

#### 17 DUTIES OF THE INDIVIDUAL DEFENDANTS

18 20. By reason of their positions as officers, directors and/or fiduciaries of Cell  
19 Therapeutics and because of their ability to control the business and corporate affairs of Cell  
20 Therapeutics, the Individual Defendants owed Cell Therapeutics and its shareholders fiduciary  
21 obligations of trust, loyalty, good faith and due care, and were and are required to use their utmost  
22 ability to control and manage Cell Therapeutics in a fair, just, honest and equitable manner. The  
23 Individual Defendants were and are required to act in furtherance of the best interests of Cell  
24 Therapeutics and its shareholders so as to benefit all shareholders equally and not in furtherance of  
25 their personal interest or benefit.

26 21. Each director and officer of the Company owes to Cell Therapeutics and its  
27 shareholders the fiduciary duty to exercise good faith and diligence in the administration of the  
28 SHAREHOLDER DERIVATIVE COMPLAINT - 7

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1 affairs of the Company and in the use and preservation of its property and assets, and the highest  
2 obligations of fair dealing. In addition, as officers and/or directors of a publicly held company, the  
3 Individual Defendants had a duty to promptly disseminate accurate and truthful information with  
4 regard to the Company's flagship drug XYOTAX, as well as the Company's forecasts so that the  
5 market price of the Company's stock would be based on truthful and accurate information.

6 22. The Individual Defendants, because of their positions of control and authority as  
7 directors and/or officers of Cell Therapeutics, were able to and did, directly and/or indirectly,  
8 exercise control over the wrongful acts complained of herein, as well as the contents of the various  
9 public statements issued by the Company. Because of their advisory, executive, managerial and  
10 directorial positions with Cell Therapeutics, each of the Individual Defendants had access to adverse  
11 non public information about the true risks of clinical study failure and prospects for failure to gain  
12 marketing approval for XYOTAX due to the corneal clearing primary endpoint required by the FDA,  
13 as well as the Company's financial prospects.

14 23. At all times relevant hereto, each of the Individual Defendants was the agent of each  
15 of the other Individual Defendants and of Cell Therapeutics, and was at all times acting within the  
16 course and scope of such agency.

17 24. To discharge their duties, the officers and directors of Cell Therapeutics were  
18 required to exercise reasonable and prudent supervision over the management, policies, practices and  
19 controls of the financial affairs of the Company. By virtue of such duties, the officers and directors  
20 of Cell Therapeutics were required to, among other things:

21 (a) refrain from acting upon material inside corporate information to benefit  
22 themselves;

23 (b) ensure that the Company complied with its legal obligations and requirements,  
24 including acting only within the scope of its legal authority and disseminating truthful and accurate  
25 statements to the FDA, SEC and the investing public;

1 (c) conduct the affairs of the Company in an efficient, business like manner so as  
2 to make it possible to provide the highest quality performance of its business, to avoid wasting the  
3 Company's assets, and to maximize the value of the Company's stock;

4 (d) properly and accurately guide investors and analysts as to the true financial  
5 condition of the Company at any given time, including making accurate statements about the  
6 Company's product and financial prospects, and ensuring that the Company maintained an adequate  
7 system of financial controls such that the Company's public statements would be true and accurate at  
8 all times;

9 (e) remain informed as to how Cell Therapeutics conducted its operations, and,  
10 upon receipt of notice or information of imprudent or unsound conditions or practices, to make  
11 reasonable inquiry in connection therewith, and to take steps to correct such conditions or practices  
12 and make such disclosures as necessary to comply with federal and state securities laws; and

13 (f) ensure that the Company was operated in a diligent, honest and prudent  
14 manner in compliance with all applicable federal, state and local laws, rules and regulations.

15 25. Each Individual Defendant, by virtue of his or her position as a director and/or  
16 officer, owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith and  
17 the exercise of due care and diligence in the management and administration of the affairs of the  
18 Company, as well as in the use and preservation of its property and assets. The conduct of the  
19 Individual Defendants complained of herein involves a knowing and culpable violation of their  
20 obligations as directors and officers of Cell Therapeutics, the absence of good faith on their part, and  
21 a reckless disregard for their duties to the Company and its shareholders that the Individual  
22 Defendants were aware or should have been aware posed a risk of serious injury to the Company.  
23 The conduct of the Individual Defendants who were also officers and/or directors of the Company  
24 during the Relevant Period has been ratified by the remaining Individual Defendants who  
25 collectively comprised all of Cell Therapeutics' Board during the Relevant Period.

26 26. The Individual Defendants breached their duties of loyalty and good faith by allowing  
27 defendants to cause or by themselves causing the Company to fail to disclose the true risks of  
28 SHAREHOLDER DERIVATIVE COMPLAINT - 9

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1 clinical study failure and prospects for failure to gain marketing approval for XYOTAX due to the  
 2 corneal clearing primary endpoint required by the FDA and to misrepresent its financial prospects, as  
 3 detailed herein *infra*, and by failing to prevent the Individual Defendants from taking such illegal  
 4 actions. In addition, as a result of defendants' illegal actions and course of conduct during the  
 5 Relevant Period, the Company is now the subject of several class action lawsuits that allege  
 6 violations of federal securities laws. As a result, Cell Therapeutics has expended and will continue  
 7 to expend significant sums of money. Such expenditures include, but are not limited to:

8 (a) costs incurred to carry out internal investigations, including legal fees paid to  
 9 outside counsel; and

10 (b) costs incurred in investigating and defending Cell Therapeutics and certain  
 11 officers in the class actions, plus potentially millions of dollars in settlements or to satisfy an adverse  
 12 judgment.

13 27. Moreover, these actions have irreparably damaged Cell Therapeutics' corporate image  
 14 and goodwill. For at least the foreseeable future, Cell Therapeutics will suffer from what is known  
 15 as the "liar's discount," a term applied to the stocks of companies who have been implicated in illegal  
 16 behavior and have misled the investing public, such that Cell Therapeutics' ability to raise equity  
 17 capital or debt on favorable terms in the future is now impaired.

#### 18 CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

19 28. In committing the wrongful acts alleged herein, the Individual Defendants have  
 20 pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and  
 21 conspired with one another in furtherance of their common plan or design. In addition to the  
 22 wrongful conduct herein alleged as giving rise to primary liability, the Individual Defendants further  
 23 aided and abetted and/or assisted each other in breach of their respective duties.

24 29. During all times relevant hereto, the Individual Defendants collectively and  
 25 individually initiated a course of conduct that was designed to and did: (i) conceal the fact that the  
 26 Company was issuing false and misleading statement about the true risks of clinical study failure and  
 27 prospects for failure to gain marketing approval for XYOTAX; (ii) maintain the Individual  
 28 SHAREHOLDER DERIVATIVE COMPLAINT - 10

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1 Defendants' executive and directorial positions at Cell Therapeutics and the profits, power and  
2 prestige that the Individual Defendants enjoyed as a result of these positions; and (iii) deceive the  
3 investing public, including shareholders of Cell Therapeutics, regarding the Individual Defendants'  
4 management of Cell Therapeutics' operations and the Company's future business prospects. In  
5 furtherance of this plan, conspiracy and course of conduct, the Individual Defendants collectively  
6 and individually took the actions set forth herein.

7 30. The Individual Defendants engaged in a conspiracy, common enterprise and/or  
8 common course of conduct commencing by at least June 2004 and continuing thereafter. During this  
9 time the Individual Defendants caused the Company to conceal the true fact that XYOTAX was not  
10 superior to the prevailing treatment. In addition, defendants also made other specific, false  
11 statements about Cell Therapeutics' future business prospects, as alleged herein.

12 31. The purpose and effect of the Individual Defendants' conspiracy, common enterprise,  
13 and/or common course of conduct was, among other things, to disguise the Individual Defendants'  
14 violations of law, breaches of fiduciary duty, abuse of control, gross mismanagement, waste of  
15 corporate assets and unjust enrichment; to conceal adverse information concerning the Company's  
16 future business prospects; and to artificially inflate the price of Cell Therapeutics common stock so  
17 they could: (i) dispose of \$833,798.37 of their personally held stock; (ii) protect and enhance their  
18 executive and directorial positions and the substantial compensation and prestige they obtained as a  
19 result thereof; (iii) sell more than \$18.4 million worth of the Company's shares via a private  
20 placement; and (iv) complete a secondary offering of 10,350,00 shares of common stock for over  
21 \$49.16 million in proceeds.

22 32. The Individual Defendants accomplished their conspiracy, common enterprise and/or  
23 common course of conduct by causing the Company to purposefully, recklessly or negligently issue  
24 false and misleading press releases about the prolonged survival and relative low adverse event rates  
25 being observed in XYOTAX pivotal trial in non-small cell lung cancer, as well as its financial  
26 prospects. Because the actions described herein occurred under the authority of the Board, each of  
27



1 the Individual Defendants was a direct, necessary and substantial participant in the conspiracy,  
 2 common enterprise and/or common course of conduct complained of herein.

3 33. Each of the Individual Defendants aided and abetted and rendered substantial  
 4 assistance in the wrongs complained of herein. In taking such actions to substantially assist the  
 5 commission of the wrongdoing complained of herein, each Individual Defendant acted with  
 6 knowledge of the primary wrongdoing, substantially assisted the accomplishment of that  
 7 wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

### 8 BACKGROUND

9 34. On May 6, 2004, the Company issued a press release entitled "Cell Therapeutics, Inc.  
 10 Announces First Quarter 2004 Financial Results." The press release stated in part:

11 Cell Therapeutics, Inc. (CTI) reported financial results for the quarter ended March  
 12 31, 2004. Total revenues for the quarter were \$4.5 million compared to \$4.9 million  
 13 in the first quarter of 2003. Net product sales for TRISENOX (arsenic trioxide)  
 14 injection were \$3.9 million for the quarter ended March 31, 2004 compared to \$4.3  
 15 million in the same period in 2003. CTI had previously stated that it expected  
 16 TRISENOX net sales to be at or below the first quarter revenues in 2003 primarily as  
 a result of an error in the reimbursement rate published by the Center for Medicare  
 Services (CMS), which incorrectly listed the reimbursement rate for TRISENOX as  
 \$2.81 per milligram instead of the correct rate of \$32.94 per milligram. CMS  
 corrected the error in early February 2004.

17 CTI reported a net loss for the quarter of \$136.4 million (\$2.75 per share)  
 18 compared to a net loss of \$30.5 million (\$0.92 per share) for the same period in 2003.  
 19 The loss for the quarter included a one time charge of \$88.5 million (\$1.79 per share)  
 20 related to the write-off of in-process research and development acquired in the  
 merger with Novuspharma S.p.A, which closed on January 1, 2004.

21 "We believe we can achieve our annual sales guidance previously provided  
 22 despite the CMS error. With plans to initiate clinical trials supporting the future  
 23 expansion of the TRISENOX label for the front-line treatment of APL and relapsed  
 24 multiple myeloma, we anticipate this could provide significant upside to our peak  
 25 revenue forecasts and have a positive impact on our P&L," stated James A. Bianco,  
 26 M.D., President and CEO of CTI. "We incurred a number of non-recurring expenses  
 27 in the first quarter as a result of the rapid enrollment in our XYOTAX pivotal studies,  
 the execution of the GOG clinical trials agreement and the significant investments in  
 our commercial efforts in the United States and Europe. These investments for  
 TRISENOX, XYOTAX and pixantrone place us in the unique position of having the  
 potential to submit two NDAs and four supplemental NDAs over the next 24  
 months."

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# IMPROPER STATEMENTS

35. On June 7, 2004, the Individual Defendants caused Cell Therapeutics to issue a press release entitled "Prolonged Median and One-Year Survival Rate Estimate in XYOTAX(TM) Pivotal Lung Cancer Study Extends Data Release to Early 2005." The press release stated in part:

At a conference sponsored by Cell Therapeutics, Inc. (CTI) during the 40th Annual Meeting of the American Society of Clinical Oncology, five cancer experts provided a clinical perspective on the continuing investigation of XYOTAX, pixantrone and TRISENOX (arsenic trioxide). In an update on the status of the phase III trials in non-small cell lung cancer, Philip Bonomi, M.D. of Rush-Presbyterian-St. Luke's Medical Center presented encouraging developments in the STELLAR 3 pivotal trial. As a result of higher than historically predicted survival rates the projected number of events required to perform the primary efficacy analysis and data release of the STELLAR 3 trial will not occur until early 2005.

"The STELLAR 3 and 4 studies are the largest studies ever conducted in poor performance status (PS2) patients. I am impressed with the median number of cycles of doublet therapy administered in STELLAR 3, particularly in light of recently published results from studies of the standard paclitaxel and carboplatin combination therapy. The number of cycles of therapy is unusual for a PS2 patient population and may reflect improved tolerability of XYOTAX," commented Bonomi. "The median survival estimate is longer than data from other trials presented at this year's ASCO conference for PS2 patients."

Director of Oncology at University of Mississippi and the chair of the GOG ovarian committee, Tate Thigpen, M.D. provided an overview of the GOG phase I/II experience with XYOTAX in more than 200 patients, along with an update on the phase III pivotal trial in the maintenance treatment of ovarian cancer, noting the GOG expects to file its Special Protocol Assessment (SPA) with the FDA shortly. This is the first time the GOG will have filed an SPA with the FDA for the maintenance treatment of patients in remission with ovarian cancer.

"Based on our phase I/II experience with XYOTAX and the data suggesting that maintenance taxane therapy improves overall survival, we believe we have designed a trial that has every chance of success. This will be the largest trial ever conducted in the maintenance treatment of ovarian cancer. The trial is designed to ensure that we can show a clinically meaningful difference in survival," noted Thigpen. "As an organization, the GOG has been at the forefront of ovarian cancer treatment and research and we are looking forward to initiating this trial with the hope of offering ovarian cancer patients a new, less toxic, more effective treatment."

36. On July 27, 2004, the Individual Defendants caused Cell Therapeutics to issue a press release entitled "Cell Therapeutics, Inc. Posts Highest TRISENOX(R) Sales Revenues Since Product SHAREHOLDER DERIVATIVE COMPLAINT - 13

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1 Launch; Second Quarter Sales Rise More Than 100% Over First Quarter Sales and 50% Over Same  
2 Period in 2003." The press release stated in part:

3 Cell Therapeutics, Inc. (CTI) reported financial results for the second quarter ended  
4 June 30, 2004. Total revenues for the quarter were \$8.3 million compared to \$6.1  
5 million in the second quarter of 2003. Net product sales for TRISENOX(R) (arsenic  
trioxide) were \$7.9 million compared to \$5.3 million for the same period in 2003.

6 CTI reported a net loss for the quarter of \$37.5 million (\$0.75 per share)  
7 compared to a net loss of \$30.8 million (\$0.93 per share) for the same period in 2003.  
8 The Company ended the quarter with approximately \$90 million in cash, cash  
equivalents, securities available-for-sale, and interest receivable.

9 "We're encouraged by the rebound in TRISENOX(R) sales, making this the  
10 best quarter since launch," stated James A. Bianco, M.D., President and CEO of CTI.  
11 "We are also very excited about the completion of enrollment in our XYOTAX(TM)  
12 STELLAR lung cancer trials. Our STELLAR 3 data release has been pushed out to  
early 2005 due to longer patient survival estimates. As such our efforts are now  
focused on pre-launch activities and being in position to submit a new drug  
application as soon as possible following positive trial results."

13 37. On July 28, 2004, the Individual Defendants caused Cell Therapeutics to issue a press  
14 release entitled "Cell Therapeutics, Inc. Announces Pricing of Upsized Public Offering of 9,000,000  
15 Shares of Common Stock." The press release stated in part:

16 Cell Therapeutics, Inc. (CTI) today announced the pricing of the underwritten public  
17 offering of 9,000,000 shares of its common stock at a public offering price of \$4.75  
18 per share.

19 These shares were sold under an existing shelf registration statement. The  
20 offering was increased by 1,000,000 shares over the proposed offering announced on  
21 July 14, 2004. In connection with this offering, CTI has granted the underwriters an  
option to purchase up to 1,350,000 additional shares to cover over-allotments. All  
shares are being sold by CTI.

22 38. On August 31, 2004, the Individual Defendants caused Cell Therapeutics to announce  
23 that the underwriters of its recent 9,000,000 share common stock public offering had exercised their  
24 over-allotment option and "purchased 1,350,000 additional shares of common stock from CTI at a  
25 price of \$4.75 per share minus the underwriting discounts. CTI sold a total of 10,350,000 shares of  
26 common stock in the offering, including the shares covered by the exercised over-allotment option,  
27 for aggregate gross proceeds of approximately \$49.16 million."

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39. On November 9, 2004, the Individual Defendants caused Cell Therapeutics to issue a press release entitled "Trisenox(R) Sales Increase 42 Percent Over Same Period in 2003; Pivotal Trial Data for XYOTAX(TM) on Schedule for Release in Early 2005." The press release stated in part:

Cell Therapeutics, Inc. (CTI) reported financial results for the third quarter ended September 30, 2004. Total revenues for the quarter were \$8.7 million compared to \$6.5 million in the third quarter of 2003. Net product sales for TRISENOX(R) (arsenic trioxide) rose to \$8.4 million compared to \$5.9 million for the same period in 2003.

CTI reported a net loss for the quarter of \$34.9 million (\$0.62 per share) compared to a net loss of \$32.1 million (\$0.96 per share) for the same period in 2003. The Company ended the quarter with approximately \$103 million in cash, cash equivalents, securities available-for-sale, and interest receivable.

"We continue to be encouraged and enthusiastic about the prolonged survival and relatively low adverse event rates being observed in our XYOTAX pivotal trials in non-small cell lung cancer (NSCLC) and look forward to reporting the preliminary results early next year," stated James A. Bianco, M.D., President and CEO of CTI. "In addition, the Gynecologic Oncology Group (GOG) had a very successful meeting with the FDA and is now in the process of readying clinical sites to initiate a XYOTAX phase III clinical trial in ovarian cancer. This milestone, coupled with the completion of the three STELLAR pivotal trials and our progress in opening clinical sites for our phase III trial of pixantrone in aggressive relapsed non-Hodgkin's lymphoma (NHL) has positioned the Company for a very exciting 2005."

40. On December 20, 2004, the Individual Defendants caused Cell Therapeutics to issue a press release entitled "Cell Therapeutics, Inc. Announces \$18.4 Million Direct Equity Placement." The press release stated in part:

Cell Therapeutics, Inc. (CTI) announced today that it has agreed to sell approximately 2,586,000 shares of its common stock to several institutional investors in a registered direct offering at a negotiated price per share of \$7.10.

The shares of common stock in this offering are being issued under an existing shelf registration statement on Form S-3, which was declared effective by the Securities and Exchange Commission on March 22, 2004.

41. On January 27, 2005, the Individual Defendants caused Cell Therapeutics to issue a press release entitled "XYOTAX(TM) Pivotal Trial in Non-Small Cell Lung Cancer, STELLAR 3, Reaches Required Number of Events." The press release stated in part:

At the Piper Jaffray Healthcare Conference, Cell Therapeutics, Inc. (CTI) announced that it is on track to report results in late March or early April from the XYOTAX(TM) pivotal trial in non-small cell lung cancer (NSCLC), known as STELLAR 3, now that the required number of events (deaths) for data analysis has been reached. Due to prolonged survival rates in this blinded trial, CTI had to delay the data analysis from the date anticipated when the trial was initiated in November 2002. The company also updated its progress on the two other ongoing pivotal trials in NSCLC, STELLAR 4 and STELLAR 2. In STELLAR 4, approximately 250 of the 313 required events have been reached and in STELLAR 2, 578 out of the 635 required events have been reached. CTI expects results from STELLAR 4 in the second quarter of this year and results from STELLAR 2 in the third quarter.

42. On February 28, 2005, the Individual Defendants caused Cell Therapeutics to issue a press release entitled "CTI Reports 2004 Quarterly and Year End Results; XYOTAX(TM) STELLAR 3 Pivotal Trial Results Expected for the First Half of March Provide Potential for 2005 to Be Transforming Year for CTI." The press release stated in part:

Cell Therapeutics, Inc. (CTI) reported financial results for the quarter and year ended December 31, 2004. Total revenues for the quarter were \$8.1 million compared to \$7.2 million in the fourth quarter of 2003. CTI reported a net loss for the quarter of \$43.5 million (\$0.72 per share) compared to net loss of \$36.7 million (\$1.09 per share) for the same period in 2003.

Total revenues for the year ended December 31, 2004, rose to \$29.6 million compared to \$24.8 million in 2003. For the year, CTI posted a net loss of \$252.3 million, including \$87.4 million related to an in-process research and development charge as a result of the acquisition of Novuspharma S.p.A., compared to a net loss of \$130.0 million in 2003. The Company ended the year with cash, cash equivalents, securities available-for-sale and interest receivable of approximately \$116.0 million. Sales of TRISENOX(R) for the quarter were \$6.4 million compared to \$6.6 million in the same period in 2003. The Company had previously guided for lower sales as a result of the launch of a competing product and foresees 2005 net sales of TRISENOX of approximately \$29 million as the commercial team prepares for the potential launch of XYOTAX.

*"We made significant progress in 2004 across all aspects of our business and are now hoping to harvest the rewards of those efforts as we prepare to analyze the results of three phase III trials for XYOTAX in lung cancer for the potential submission of a new drug application (NDA) later this year," noted*

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1 *James A Bianco, M.D., President and CEO of CTI. "With everyone focused on*  
 2 *XYOTAX, it is easy to forget that we also have the potential for an interim analysis*  
 3 *for our pivotal trial of pixantrone in aggressive lymphoma at the end of this year,*  
 4 *which could lead to an NDA submission in 2006. With a robust pipeline of novel*  
*oncology products and upcoming pivotal milestones, we believe this may be a*  
*transforming year for CTI."*

#### THE TRUTH IS DISCLOSED

5 43. On March 7, 2005, the Individual Defendants caused Cell Therapeutics to issue a  
 6 press release entitled "STELLAR 3 Pivotal Trial Shows XYOTAX (TM) Reduces Side Effects of  
 7 Paclitaxel With Equivalent Efficacy in the Treatment of Non-Small Cell Lung Cancer (NSCLC)  
 8 Patients; Study Misses Primary Endpoint, Meets Standard Statistical Test for Non-Inferiority;  
 9 STELLAR 3 Trial Demonstrates Longest Median Survival Reported in PS2 NSCLC Patients;  
 10 Tolerability and Convenience Favor XYOTAX." The press release stated in part:

11 "We are disappointed that XYOTAX in combination with carboplatin showed equal  
 12 efficacy after the unprecedented blended median and 1-year survival we saw on the  
 13 trial. We are encouraged by the preliminary analysis, which demonstrates a  
 14 significant XYOTAX treatment effect, reduction in toxicities, and increased patient  
 15 convenience," stated James A. Bianco, M.D., President and CEO of CTI. "We look  
 16 forward to our upcoming discussion with FDA regarding our STELLAR 2  
 17 amendment and the preliminary results of STELLAR 3, as well as having results  
 18 from STELLAR 2 in April, with STELLAR 4 results coming in shortly thereafter."

19 44. On this disastrous news, the Company's shares plummeted 50% in a single day on  
 20 volume of more than 33 million shares.

#### REASONS THE STATEMENTS WERE IMPROPER

21 45. The statements contained herein were materially false and misleading when made  
 22 because the Individual Defendants caused the Company to fail to disclose or indicate the following:

23 (a) that the observations associated with XYOTAX evidenced that the primary  
 24 endpoint for the XYOTAX study would not be met, as claimed;

25 (b) that claims associated with the Company's ability to commence pre-launch  
 26 activities or otherwise even begin to submit an NDA for XYOTAX were grossly overstated; in fact,  
 27 the Company's ability to ever reach these points is highly questionable; and

(c) that the survival rate for individuals with NSCLC using XYOTAX were not superior to the prevailing treatment.

46. As a result of the Individual Defendants' actions, Cell Therapeutics' market capitalization has been damaged by over \$428 million. At the same time that the defendants were causing Cell Therapeutics to suffer such devastation of its market capitalization, the Insider Selling Defendants fared much better by selling \$833,798.37 of their personally held stock.

#### ILLEGAL INSIDER SELLING

47. While in possession of the undisclosed material adverse information, the Insider Selling Defendants sold the following shares of Cell Therapeutics stock:

Name	Date	Shares	Price	Proceeds
James A. Bianco	4/5/2005	20000	\$ 3.69	\$ 73,800.00
	4/5/2005	10000	\$ 3.68	\$ 36,800.00
	12/10/2004	1800	\$ 7.62	\$ 13,716.00
	12/10/2004	300	\$ 7.63	\$ 2,289.00
	12/10/2004	1400	\$ 7.64	\$ 10,696.00
	12/10/2004	1300	\$ 7.59	\$ 9,867.00
	12/10/2004	100	\$ 7.60	\$ 760.00
	12/10/2004	300	\$ 7.61	\$ 2,283.00
	12/10/2004	1000	\$ 7.56	\$ 7,560.00
	12/10/2004	500	\$ 7.57	\$ 3,785.00
	12/10/2004	775	\$ 7.58	\$ 5,874.50
	12/10/2004	1100	\$ 7.65	\$ 8,415.00
	12/10/2004	5225	\$ 7.50	\$ 39,187.50
	12/10/2004	1900	\$ 7.52	\$ 14,288.00
	12/10/2004	400	\$ 7.53	\$ 3,012.00
	12/10/2004	500	\$ 7.54	\$ 3,770.00
	12/10/2004	3400	\$ 7.55	\$ 25,670.00
	7/1/2004	10000	\$ 7.25	\$ 72,500.00
		<b>60000</b>		<b>\$ 334,273.00</b>
Jack W. Singer	3/1/2005	5000	\$ 10.00	\$ 50,000.00
	3/1/2005	100	\$ 10.02	\$ 1,002.00
	3/1/2005	700	\$ 9.98	\$ 6,986.00
	3/1/2005	1135	\$ 9.93	\$ 11,270.55
	3/1/2005	565	\$ 9.94	\$ 5,616.10
	2/1/2004	7500	\$ 9.98	\$ 74,850.00
	1/3/2005	1600	\$ 8.01	\$ 12,816.00
	1/3/2005	400	\$ 8.11	\$ 3,244.00
	1/3/2005	1200	\$ 8.10	\$ 9,720.00
	12/13/2005	1600	\$ 7.55	\$ 12,080.00

		19800		\$ 187,584.65
Silvano Spinelli	1/4/2005	4300	\$ 7.76	\$ 33,368.00
	1/4/2005	5000	\$ 7.80	\$ 39,000.00
	1/4/2005	7000	\$ 7.79	\$ 54,530.00
	1/4/2005	8700	\$ 7.78	\$ 67,686.00
	1/4/2005	2550	\$ 7.84	\$ 19,992.00
	1/4/2005	572	\$ 7.83	\$ 4,478.76
	1/4/2005	11878	\$ 7.82	\$ 92,685.96
		40000		\$ 311,940.72
Total:		119800		\$ 833,798.37

#### DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

48. Plaintiff brings this action derivatively in the right and for the benefit of Cell Therapeutics to redress injuries suffered, and to be suffered, by Cell Therapeutics as a direct result of the breaches of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets and unjust enrichment, as well as the aiding and abetting thereof, by the Individual Defendants. Cell Therapeutics is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

49. Plaintiff will adequately and fairly represent the interests of Cell Therapeutics in enforcing and prosecuting its rights.

50. Plaintiff is and was an owner of the stock of Cell Therapeutics during times relevant to the Individual Defendants' wrongful course of conduct alleged herein, and remains a shareholder of the Company.

51. The current Board of Cell Therapeutics consists of the following nine individuals: defendants Link, Bianco, Fluke, Gregorian, Nudelman, Munding, Platzer, Singer, and Spinelli. Plaintiff has not made any demand on the present Board of Cell Therapeutics to institute this action because such a demand would be a futile, wasteful and useless act, particularly for the following reasons:

(a) As a result of their access to and review of internal corporate documents, conversations and connections with other corporate officers, employees and directors; and



1 attendance at management and Board meetings, each of the defendants knew the adverse non public  
 2 information regarding the Company's flagship drug XYOTAX. While in possession of this material  
 3 adverse non public information regarding the Company's flagship drug XYOTAX, the following  
 4 current members of the Cell Therapeutics Board participated in the illegal insider selling:

5 (i) During the Relevant Period, Bianco sold 60,000 shares of Cell  
 6 Therapeutics stock for proceeds of \$334,273.00;

7 (ii) During the Relevant Period, Singer sold 19,800 shares of Cell  
 8 Therapeutics stock for proceeds of \$187,584.65; and

9 (iii) During the Relevant Period, Spinelli sold 40,000 shares of Cell  
 10 Therapeutics stock for proceeds of \$311,940.72. Because these defendants received a personal  
 11 financial benefit from the challenged insider trading transactions, these defendants are interested and  
 12 any demand upon them is futile;

13 (b) The Compensation Committee of the Board discharges the Board's  
 14 responsibilities relating to compensation of the Company's executive officers, including the Chief  
 15 Executive Officer, oversees all compensation programs involving the use of the Company's stock  
 16 and produces an annual report on executive compensation in accordance with applicable rules and  
 17 regulations for inclusion in the Company's proxy statement for its annual meeting of shareholders.  
 18 The Compensation Committee met seven times in 2003. According to the Company's public  
 19 website, the Compensation Committee is comprised of defendants Gregorian, Link and Munding.  
 20 As the members of the Compensation Committee singularly control the other defendants' awards, the  
 21 remaining members of the Board will not institute this action against defendants Gregorian, Link and  
 22 Munding. To do so would jeopardize each defendant's personal financial compensation. Thus,  
 23 demand on defendants Bianco, Fluke, Nudelman, Platzer, Singer, and Spinelli is futile;

24 (c) The principal professional occupation of defendant Bianco is his employment  
 25 with Cell Therapeutics, pursuant to which he received and continues to receive substantial monetary  
 26 compensations and other benefits. Specifically, for FY:03, Cell Therapeutics paid defendant Bianco  
 27 \$3,053,665, in salary, bonus, restricted stock awards and other compensation, and granted him

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1 125,000 options to purchase Cell Therapeutics stock. Accordingly, defendant Bianco lacks  
2 independence from defendants Gregorian, Link and Munding, defendants who are not disinterested  
3 and/or independent and who exert influence over defendant Bianco's compensation by virtue of their  
4 position as members of the Compensation Committee. This lack of independence renders defendant  
5 Bianco incapable of impartially considering a demand to commence and vigorously prosecute this  
6 action;

7 (d) The principal professional occupation of defendant Singer is his employment  
8 with Cell Therapeutics, pursuant to which he received and continues to receive substantial monetary  
9 compensations and other benefits. Specifically, for FY-03, Cell Therapeutics paid defendant Singer  
10 \$1,223,596 in salary, bonus, restricted stock awards and other compensation, and granted him 75,000  
11 options to purchase Cell Therapeutics stock. Accordingly, defendant Singer lacks independence  
12 from defendants Gregorian, Link and Munding, defendants who are not disinterested and/or  
13 independent and who exert influence over defendant Singer's compensation by virtue of their  
14 position as members of the Compensation Committee. This lack of independence renders defendant  
15 Singer incapable of impartially considering a demand to commence and vigorously prosecute this  
16 action;

17 (e) The principal professional occupation of defendant Spinelli is his employment  
18 with Cell Therapeutics, pursuant to which he received and continues to receive substantial monetary  
19 compensations and other benefits. Accordingly, defendant Spinelli lacks independence from  
20 defendants Gregorian, Link and Munding, defendants who are not disinterested and/or independent  
21 and who exert influence over defendant Spinelli's compensation by virtue of their position as  
22 members of the Compensation Committee. This lack of independence renders defendant Spinelli  
23 incapable of impartially considering a demand to commence and vigorously prosecute this action;

24 (f) Defendants Link, Fluke, Gregorian, Nadelman, Munding and Platzer as  
25 nonemployee directors each receive \$2,000 per meeting of the board, up to a maximum of \$10,000  
26 per director each calendar year, and \$1,000 per meeting of a board committee, up to a maximum of  
27 \$5,000 per committee per director each calendar year. These defendants also receive an annual grant

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1 of 10,000 fully vested stock options. Accordingly, defendants Link, Fluke, Gregorian, Nudelman,  
2 Munding and Platzer are incapable of impartially considering a demand to commence and  
3 vigorously prosecute this action because they have an interest in safeguarding their substantial  
4 compensation;

5 (g) According to the Company's public website, the Nominating and Governance  
6 Committee is comprised of defendants Fluke, Munding, and Nudelman. The Committee is  
7 responsible for: (i) assisting the Board by identifying prospective director nominees and to  
8 recommend to the Board the director nominees for each annual meeting of shareholders; (ii)  
9 developing and recommending to the Board the governance principles applicable to the Company;  
10 (iii) overseeing the evaluation of the Board and management; and (iv) recommending to the Board  
11 director nominees for each committee. Further, the Committee determines the form and amount of  
12 director compensation and conducts an annual review of director compensation. The Nominating  
13 and Governance Committee met once in 2003. Nonetheless, defendants Fluke, Munding, and  
14 Nudelman failed to fulfill their duties and responsibilities to oversee the evaluation of the Board and  
15 management as evidenced by the conduct discussed herein and as required by the Nominating and  
16 Governance Committee Charter. By such actions, defendants Fluke, Munding, and Nudelman  
17 breached their duties by causing or allowing the conduct discussed herein. As a result of these  
18 defendants' breach of their duties, any demand upon them is futile;

19 (h) Defendants Fluke, Munding, and Nudelman singularly control the rest of the  
20 directors' positions and awards by virtue of their position as the members of the Nominating and  
21 Governance Committee. Defendants Fluke, Munding, and Nudelman are responsible for  
22 identifying qualified individuals to become members of the Board, recommending Board nominees  
23 for each of the Board's committees, and determining the form and amount of director compensation.  
24 Therefore, defendants Link, Bianco, Gregorian, Platzer, Singer, and Spinelli will not initiate suit  
25 against defendants Fluke, Munding, and Nudelman. Thus demand on defendants Link, Bianco,  
26 Gregorian, Platzer, Singer, and Spinelli is futile;

(i) The Corporate Governance Guidelines ("CGG") adopted by the Board state that, "[o]ne of the duties of the Board of Directors of Cell Therapeutics, Inc. (the "Company") is to oversee the chief executive officer and other senior management in the competent and ethical operation of the corporation. The Board of Directors wishes to set standards to ensure that the Company is committed to business success through the maintenance of the highest standards of responsibility and ethics. . . ." The CGG go on to state that, "[t]he fundamental role of the directors is to exercise their business judgment to act in what they reasonably believe to be (sic) the best interests of the Company and its shareholders. In fulfilling that responsibility the directors should be able to rely on the honesty and integrity of the Company's senior management and legal, accounting, financial and other advisors. . . . The board believes that it is critical that the Company speak with one voice, and that, absent special circumstances, management speak for the Company. . . ." It further states that, "[t]he board has complete access to all Company officers and employees." Defendants Link, Bianco, Fluke, Gregorian, Nudelman, Munding, Platzer, Singer and Spinelli failed to comply with the Corporate Governance Guidelines as evidenced by the conduct discussed herein. By such actions, these defendants breached their duty, as outlined in the CGG, by causing or allowing the conduct discussed herein. As a result of these defendants' breach of their duties, any demand upon them is futile;

(j) The Cell Therapeutics Board has adopted a Code of Ethics for Senior Executive and Financial Officers ("Code") ". . . to promote the honest and ethical conduct of the Senior Officers (as defined below) of Cell Therapeutics, Inc. ("CTI"), including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; full, fair, accurate, timely and understandable disclosure in periodic reports filed by CTI and compliance with all applicable rules and regulations applicable to CTI and its officers." The Code goes on to state that, "[t]his Code of Ethics is applicable to CTI's chief executive officer . . . 'Senior Officers.' While we expect honest and ethical conduct in all aspects of our business from all of our employees, we expect the highest possible honest and ethical conduct from our Senior Officers. . . . CTI's Code of Business Conduct and Ethics, which this Code of Ethics for Senior Executive and Financial Officers

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1 supplements, sets forth the fundamental principles and key policies and procedures that govern the  
 2 conduct of all CTI employees. You are bound by the requirements and standards set forth in the CTI  
 3 Corporation Code of Business Conduct and Ethics, as well as those set forth in this Code of Ethics  
 4 and other applicable policies and procedures. *Compliance with this Code of Ethics is a condition of*  
 5 *your employment and any violations of this Code may result in disciplinary action, up to and*  
 6 *including termination of your employment."* It further states that, "[y]ou are expected to comply  
 7 with both the letter and spirit of all applicable laws, rules and regulations governing the conduct of  
 8 our business and to report any suspected violations of all applicable laws, rules and regulations to the  
 9 Chair of the Audit Committee." The Code continues by stating that, "[a]s a public company, CTI is  
 10 required to file periodic and other reports with the Securities and Exchange Commission ("SEC").  
 11 *CTI's policy is to make full, fair, accurate, timely and understandable disclosure in compliance*  
 12 *with all applicable laws and regulations in all reports and documents that CTI files with, or submits*  
 13 *to, the SEC and in all other public communications made by CTI.* As a Senior Officer, you are  
 14 required to promote compliance with this policy and to abide by all CTI standards, policies and  
 15 *procedures designed to promote compliance with this policy."* Defendants Bianco failed to comply  
 16 with the Code of Ethics for Senior Executive and Financial Officers as evidenced by the conduct  
 17 discussed herein. By such actions, defendant Bianco breached his duties by causing or allowing the  
 18 conduct discussed herein which is an express violation of the Code. As a result of Bianco's breach  
 19 of his duties, any demand upon him is futile;

20 (k) The entire Cell Therapeutics Board and senior management participated in the  
 21 wrongs complained of herein. Cell Therapeutics directors are not disinterested or independent due to  
 22 the following: defendants Link, Bianco, Fluke, Gregorian, Nudelman, Mundinger, Platzer, Singer,  
 23 and Spinelli served on the Cell Therapeutics Board during the Relevant Period. Pursuant to their  
 24 specific duties as Board members, each was charged with the management of the Company and to  
 25 conduct its business affairs. Each of the above referenced defendants breached the fiduciary duties  
 26 that they owed to Cell Therapeutics and its shareholders in that they failed to prevent and correct the  
 27 false and misleading press releases concerning the Company's drug XYOTAX. Thus, the Cell  
 28 SHAREHOLDER DERIVATIVE COMPLAINT - 24

1 Therapeutics Board cannot exercise independent objective judgment in deciding whether to bring  
 2 this action or whether to vigorously prosecute this action because its members are interested  
 3 personally in the outcome as it is their actions that have subjected Cell Therapeutics to millions of  
 4 dollars in liability for possible violations of applicable securities laws;

5 (l) The Individual Defendants, because of their inter related business,  
 6 professional and personal relationships, have developed debilitating conflicts of interest that prevent  
 7 the Board members of the Company from taking the necessary and proper action on behalf of the  
 8 Company as requested herein. In addition to the conflicts that exist as a result of their participation  
 9 in the improper accounting and insider selling, as detailed herein supra, the majority of the Board,  
 10 including the defendants listed below, are subject to the following prejudicial entanglements:

11 (i) *Nudelman and Singer Are Long Time Business Associates:*

12 Defendant Nudelman is the President, Chief Executive Officer and a director  
 13 of the Hope Heart Institute, and has been since May 2000. Defendant Singer is a  
 14 member of the scientific advisory board of the Hope Heart Institute. In November  
 15 2002, Cell Therapeutics entered into a Sponsored Research Agreement with The  
 16 Hope Heart Institute to perform research specified by us and reviewed by a joint  
 17 research committee comprised of individuals from our company and from The Hope  
 18 Heart Institute. The Agreement has a term of two years and in addition to monthly  
 payments, the Individual Defendants caused the Company to grant a fully vested  
 warrant to the Hope Heart Institute to purchase 100,000 shares of Cell Therapeutics'  
 common stock at a purchase price of \$10.00 per share. Because of their long  
 standing and entangling business and professional relationships, neither defendant  
 Nudelman nor defendant Singer will take the action requested by plaintiff herein  
 against one another or the remainder of the Individual Defendants.

19 (ii) *Bianco and Singer Are Long Time Business Associates:*

20 Prior to founding Cell Therapeutics, Bianco was an assistant professor of  
 21 medicine at the University of Washington, Seattle and an assistant member in the  
 22 clinical research division of the Fred Hutchinson Cancer Research Center. From  
 23 1990 to 1992, Bianco was the director of the Bone Marrow Transplant Program at  
 the Veterans Administration Medical Center in Seattle. Singer was a professor of  
 medicine at the University of Washington and a full member of the Fred Hutchinson  
 Cancer Research Center. From 1975 to 1992, Dr. Singer was the chief of medical  
 oncology at the Veterans Administration Medical Center in Seattle. The Fred  
 Hutchinson Cancer Research Center is a corporate affiliate of the Hope Heart  
 Institute. Because of their long standing and entangling business and professional  
 relationships, neither defendant Bianco nor defendant Singer will take the action  
 requested by plaintiff herein against one another or the remainder of the Individual  
 Defendants.



1 (m) As of April 19, 2004, defendant Bianco held 255,000 shares of unvested  
2 restricted stock. Under section 7.8 of Cell Therapeutics' 2003 Equity Incentive Plan, restricted stock  
3 for which restrictions have not lapsed shall revert to the Company. As all unvested restricted shares  
4 held by defendant Bianco will never vest unless Bianco retains his positions as President, CEO and  
5 director of Cell Therapeutics, any demand upon defendant Bianco is futile;

6 (n) As of April 19, 2004, defendant Singer held 90,000 shares of unvested  
7 restricted stock. Under section 7.8 of Cell Therapeutics' 2003 Equity Incentive Plan, restricted stock  
8 for which restrictions have not lapsed shall revert to the Company. As all unvested restricted shares  
9 held by defendant Singer will never vest unless Singer retains his positions as Executive Vice  
10 President, Chief Medical Officer and director of Cell Therapeutics, any demand upon defendant  
11 Singer is futile;

12 (o) Each of the key officers and directors knew of and/or directly benefited from  
13 the wrongdoing complained of herein;

14 (p) The defendant directors of Cell Therapeutics, as more fully detailed herein,  
15 participated in, approved and/or permitted the wrongs alleged herein to have occurred and  
16 participated in efforts to conceal or disguise those wrongs from Cell Therapeutics' stockholders or  
17 recklessly and/or negligently disregarded the wrongs complained of herein, and are therefore not  
18 disinterested parties;

19 (q) In order to bring this suit, all of the directors of Cell Therapeutics would be  
20 forced to sue themselves and persons with whom they have extensive business and personal  
21 entanglements, which they will not do, thereby excusing demand;

22 (r) The acts complained of constitute violations of the fiduciary duties owed by  
23 Cell Therapeutics' officers and directors and these acts are incapable of ratification;

24 (s) Each of the defendant directors of Cell Therapeutics authorized and/or  
25 permitted the false statements disseminated directly to the public or made directly to securities  
26 analysts and which were made available and distributed to shareholders, authorized and/or permitted  
27 the issuance of various of the false and misleading statements and are principal beneficiaries of the  
28 SHAREHOLDER DERIVATIVE COMPLAINT - 26

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1 wrongdoing alleged herein, and thus could not fairly and fully prosecute such a suit even if such suit  
2 was instituted by them;

3 (t) Any suit by the current directors of Cell Therapeutics to remedy these wrongs  
4 would likely expose the Individual Defendants and Cell Therapeutics to further violations of the  
5 securities laws that would result in civil actions being filed against one or more of the Individual  
6 Defendants, thus, they are hopelessly conflicted in making any supposedly independent  
7 determination whether to sue themselves;

8 (u) Cell Therapeutics has been and will continue to be exposed to significant  
9 losses due to the wrongdoing complained of herein, yet the Individual Defendants and current Board  
10 have not filed any lawsuits against themselves or others who were responsible for that wrongful  
11 conduct to attempt to recover for Cell Therapeutics any part of the damages Cell Therapeutics  
12 suffered and will suffer thereby;

13 (v) If the current directors were to bring this derivative action against themselves  
14 they would thereby expose their own misconduct, which underlies allegations against them  
15 contained in class action complaints for violations of securities law, which admissions would impair  
16 their defense of the class actions and greatly increase the probability of their personal liability in the  
17 class actions, in an amount likely to be in excess of any insurance coverage available to the  
18 Individual Defendants. In essence, they would be forced to take positions contrary to the defenses  
19 they will likely assert in the securities class actions. They will not do this. Thus, demand is futile  
20 and

21 (w) If Cell Therapeutics' current and past officers and directors are protected  
22 against personal liability for their acts of mismanagement, abuse of control and breach of fiduciary  
23 duty alleged in this Complaint by directors' and officers' liability insurance, they caused the  
24 Company to purchase that insurance for their protection with corporate funds, i.e., monies belonging  
25 to the stockholders of Cell Therapeutics. However, due to certain changes in the language of  
26 directors' and officers' liability insurance policies in the past few years, the directors' and officers'  
27 liability insurance policies covering the defendants in this case contain provisions that eliminate

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1 coverage for any action brought directly by Cell Therapeutics against these defendants, known as,  
2 *inter alia*, the "insured versus insured exclusion." As a result, if these directors were to sue  
3 themselves or certain of the officers of Cell Therapeutics, there would be no directors' and officers'  
4 insurance protection and thus, this is a further reason why they will not bring such a suit. On the  
5 other hand, if the suit is brought derivatively, as this action is brought, such insurance coverage  
6 exists and will provide a basis for the Company to effectuate recovery. If there is no directors' and  
7 officers' liability insurance at all then the current directors will not cause Cell Therapeutics to sue  
8 them, since they will face a large uninsured liability.

9 52. Moreover, despite the Individual Defendants having knowledge of the claims and  
10 causes of action raised by plaintiff, the current Board has failed and refused to seek to recover for  
11 Cell Therapeutics for any of the wrongdoing alleged by plaintiff herein.

#### 12 FIRST CAUSE OF ACTION

##### 13 Against the Insider Selling Defendants for Breach of Fiduciary 14 Duties for Insider Selling and Misappropriation of Information

15 53. Plaintiff incorporates by reference and realleges each and every allegation set forth  
16 above, as though fully set forth herein.

17 54. At the time of the stock sales set forth herein, the Insider Selling Defendants knew the  
18 information described above, and sold Cell Therapeutics common stock on the basis of such  
19 information.

20 55. The information described above was proprietary non-public information concerning  
21 the Company's financial condition and future business prospects. It was a proprietary asset  
22 belonging to the Company, which the Insider Selling Defendants used for their own benefit when  
23 they sold Cell Therapeutics common stock.

24 56. At the time of their stock sales, the Insider Selling Defendants knew that the  
25 Company's revenues were materially overstated. The Insider Selling Defendants' sales of Cell  
26 Therapeutics common stock while in possession and control of this material adverse non-public  
27 information was a breach of their fiduciary duties of loyalty and good faith.

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57. Since the use of the Company's proprietary information for their own gain constitutes a breach of the Insider Selling Defendants' fiduciary duties, the Company is entitled to the imposition of a constructive trust on any profits the Insider Selling Defendants obtained thereby.

## SECOND CAUSE OF ACTION

### Against All Defendants for Breach of Fiduciary Duty

58. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

59. The Individual Defendants owed and owe Cell Therapeutics fiduciary obligations. By reason of their fiduciary relationships, the Officer Defendants and Director Defendants owed and owe Cell Therapeutics the highest obligation of good faith, fair dealing, loyalty and due care.

60. The Individual Defendants, and each of them, violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision.

61. Each of the Individual Defendants had actual or constructive knowledge that they had caused the Company to improperly misrepresent the fact that the additional phase III study requested by the FDA required the Company's drug XYOTAX to demonstrate success a much more difficult primary endpoint and failed to correct the Company's false and misleading press releases and publicly reported guidance. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

62. As a direct and proximate result of the Individual Defendants' failure to perform their fiduciary obligations, Cell Therapeutics has sustained significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

63. Plaintiff on behalf of Cell Therapeutics has no adequate remedy at law.

## THIRD CAUSE OF ACTION

### Against All Defendants for Abuse of Control

64. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

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1       75. As a result of the issuance of the false and misleading press releases concerning  
 2 XYOTAX, and by failing to properly consider the interests of the Company and its public  
 3 shareholders by failing to conduct proper supervision, defendants have caused Cell Therapeutics to  
 4 waste valuable corporate assets by paying incentive based bonuses to certain of its executive officers  
 5 and incur potentially millions of dollars of legal liability and/or legal costs to defend defendants'  
 6 unlawful actions.

7       76. As a result of the waste of corporate assets, the Individual Defendants are liable to the  
 8 Company.

9       77. Plaintiff on behalf of Cell Therapeutics has no adequate remedy at law.

#### 10                                   SIXTH CAUSE OF ACTION

#### 11                                   Against All Defendants for Unjust Enrichment

12       78. Plaintiff incorporates by reference and realleges each and every allegation set forth  
 13 above, as though fully set forth herein.

14       79. By their wrongful acts and omissions, defendants were unjustly enriched at the  
 15 expense of and to the detriment of Cell Therapeutics.

16       80. Plaintiff, as a shareholder and representative of Cell Therapeutics, seeks restitution  
 17 from these defendants, and each of them, and seeks an order of this Court disgorging all profits  
 18 benefits and other compensation obtained by these defendants, and each of them, from their  
 19 wrongful conduct and fiduciary breaches.

#### 20                                   PRAYER FOR RELIEF

21       WHEREFORE, plaintiff demands judgment as follows:

22       A. Against all of the Individual Defendants and in favor of the Company for the amount  
 23 of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary  
 24 duties, abuse of control, gross mismanagement, waste of corporate assets and unjust enrichment;

25       B. Extraordinary equitable and/or injunctive relief as permitted by law, equity and state  
 26 statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust

1 on or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to

2 assure that plaintiff on behalf of Cell Therapeutics has an effective remedy;

3 C. Awarding to Cell Therapeutics restitution from the defendants, and each of them, and  
4 ordering disgorgement of all profits, benefits and other compensation obtained by the defendants;

5 D. Awarding to plaintiff the costs and disbursements of the action, including reasonable  
6 attorneys' fees, accountants' and experts' fees, costs, and expenses; and


7 E. Granting such other and further relief as the Court deems just and proper.

8 **JURY DEMAND**

9 Plaintiff demands a trial by jury.

10 DATED: May 6, 2005

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KIRK MULFINGER

11  
12 

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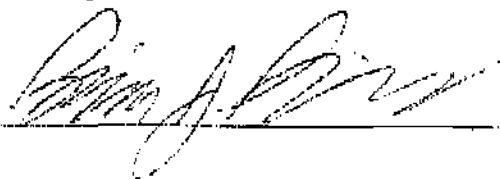
VERIFICATION

I, Brian J. Robbins, hereby declare as follows:

1. I am a member of the law firm of Robbins Umeda & Fink, LLP, counsel for plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. I am informed and believe the matters therein are true and on that ground allege that the matters stated therein are true.

2. I make this Verification because plaintiff is absent from the County of San Diego where I maintain my office.

Executed this 28th day of April, 2005, at San Diego, California.

A handwritten signature in dark ink, appearing to read "Brian J. Robbins", is written over a horizontal line.